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SUPREME COURT OF THE UNITED STATES 1951

OCTOBER TERM, 1950

CHARLES ELMORE CLEARY
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No. 486

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.s.

MICHIGAN PUBLIC SERVICE COMMISSION AND
MICHIGAN CONSOLIDATED GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

**STATEMENT OF MICHIGAN PUBLIC SERVICE COM-
MISSION OPPOSING JURISDICTION AND MOTION
TO DISMISS OR AFFIRM.**

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Public Service Commission.

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No. 486

PANHANDLE EASTERN PIPE LINE COMPANY, A
CORPORATION,

v.s. *Appellant,*

MICHIGAN PUBLIC SERVICE COMMISSION AND
MICHIGAN CONSOLIDATED GAS COMPANY,

Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT OF MICHIGAN PUBLIC SERVICE COM-
MISSION, APPELLEE, DISCLOSING MATTERS AND
GROUNDS MAKING AGAINST JURISDICTION AND
MOTION TO DISMISS OR AFFIRM.

The Michigan Public Service Commission, one of the appellees, believing that the matters set forth below will demonstrate the lack of substance in the Federal questions raised by this appeal, file this, their statement, disclosing matters and grounds making against jurisdiction and pursuant to Supreme Court Rule 12, § 3, they respectfully move

the Court to dismiss the appeal or affirm the judgment of the court below, on the following grounds:

First: Questions here presented involving the validity of the Michigan statute requiring public utilities there defined to secure a certificate of public convenience and necessity in certain cases¹ are not ripe for decision by this Court:

(a) the appellant has not exhausted the administrative or judicial remedies made available to it by such state law; it has not applied for, much less has it been denied upon consideration of all the facts and circumstances a certificate of public convenience and necessity, nor having been so denied has it sought the judicial review afforded by the statute;²

(b) the court below in their decision, 328 Mich. at 655, left the door open to appellant's pursuit of such remedies; and it becomes increasingly apparent in contemplation of the entire opinion, that the relief sought was denied without prejudice;³

(c) therefore it cannot be said with that degree of certainty essential to jurisdiction, that this Court is called upon by § 1257, Title 28 USC as revised, to review a final judgment or decree rendered by the highest court of Michigan on the questions now presented.⁴

¹ Pub. Acts Mich. 1929, No. 69, Comp. Laws Mich. 1948, § 460.501 *et seq.*, Mich. Stat. Ann. (Henderson) § 22.141 *et seq.*

² *Idem.*, § 6, Comp. Laws Mich. § 460.506, Mich. Stat. Ann. § 22.146.

³ The decree of the court below affirmed, 328 Mich. at 665, the order (R. 47) of the commission that Panhandle desist and refrain from making direct sales of natural gas until such time as it has obtained the certificate required by Michigan law.

⁴ *Republic Natural Gas Co. v. Oklahoma*, 334 U. S. 62, with which, *cf.* *Cities Service Gas Co. v. Peerless Oil & Gas Co., et al.*, No. 153, October Term, 1950, Dec. 11, 1950; see also *Gospel Army v. City of Los Angeles*, 331 U. S. 543.

Second: The Federal questions raised on behalf of appellant are so unsubstantial as to need no further argument, and therefore warrant the Court in summarily disposing of the appeal at this stage of the proceedings, *specif.* because

(a) they have been set at rest in principle by recent decisions of this Court;⁵

(b) such decisions established the doctrine that the purpose of the Natural Gas Act⁶ is to provide an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, complementary to such scheme of regulation adopted by any State;

(c) under such decisions § 1 (b) thereof made the Natural Gas Act applicable to three separate things: "(1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale." And throughout the Act "transportation" and "sale" are viewed as separate subjects of regulation;⁷

(d) the applicable Michigan law (note 1) as construed by her highest court, 328 Mich. 650, as here applied, does not interfere with the jurisdiction or authority of the Federal Power Commission under the Natural Gas Act, nor does it regulate or attempt to regulate the transportation of natural gas in interstate commerce, or its sale in interstate commerce for resale; on the contrary the Michigan statute places a reasonable police regulation upon the appellant.

WHEREFORE, the Michigan Public Service Commission, appellee, respectfully submits this statement disclosing the

⁵ *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U. S. 507, and cases cited; cf. *Federal Power Commission v. East Ohio Gas Co.*, 338 U. S. 464, and cases there cited.

⁶ 52 Stat. 821, as amended by 56 Stat. 83, 15 U. S. C. § 717 et seq.

⁷ *Federal Power Commission v. East Ohio Gas Co.*, 338 U. S. 464.

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foregoing matters and grounds making against the jurisdiction of this Court, and in that connection, its motion to dismiss or affirm.

Respectfully submitted,

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